

1 John L. Cooper (State Bar No. 050324)  
jcooper@fbm.com  
2 Stephanie P. Skaff (State Bar No. 183119)  
sskaff@fbm.com  
3 Eugene Y. Mar (State Bar No. 227071)  
emar@fbm.com  
4 Farella Braun & Martel LLP  
235 Montgomery Street, 17th Floor  
5 San Francisco, CA 94104  
Telephone: (415) 954-4400  
6 Facsimile: (415) 954-4480  
7 Attorneys for Defendants  
TECHNOLOGY PROPERTIES LIMITED  
8 and ALLIACENSE LIMITED

9 Charles T. Hoge (State Bar No. 110696)  
choge@knlh.com  
10 KIRBY NOONAN LANCE & HOGE  
35 Tenth Avenue  
11 San Diego, California 92101  
Telephone: (619) 231-8666  
12 Facsimile: (619) 231-9593

13 Attorney for Defendants  
14 PATRIOT SCIENTIFIC CORP.

15 UNITED STATES DISTRICT COURT  
16  
17 NORTHERN DISTRICT OF CALIFORNIA  
18  
19 SAN JOSE DIVISION

20 ACER, INC., ACER AMERICA CORP.,  
21 and GATEWAY INC.,

22 Plaintiff,

23 v.

24 TECHNOLOGY PROPERTIES  
LIMITED, PATRIOT SCIENTIFIC  
25 CORPORATION, and ALLIACENSE  
LIMITED,

26 Defendants.  
27  
28

Timothy Paar Walker (State Bar No. 105001)  
Harold H. Davis, Jr. (State Bar No. 235552)  
K&L Gates LLP  
55 Second Street, Suite 1700  
San Francisco, CA 94105-3493  
Telephone: (415) 882-8200  
Facsimile: (415) 882-8220

Jeffrey Ratinoff (State Bar No. 197241)  
K&L Gates LLP  
630 Hansen Way  
Palo Alto, CA 94340  
Telephone: (650) 798-6700  
Facsimile: (650) 798-6701

Attorneys for Plaintiffs  
ACER INC., ACER AMERICA CORP., and  
GATEWAY INC.

Case No. 5:08-cv-00877 JF

**STIPULATED REQUEST TO DISMISS  
THE SECOND CLAIM OF PLAINTIFFS'  
FIRST AMENDED COMPLAINT  
REGARDING U.S. PATENT NO. 5,784,584  
AND [PROPOSED] ORDER THEREON**

The Honorable Jeremy Fogel

1           **WHEREAS** plaintiffs Acer, Inc., Acer America Corp., and Gateway, Inc. (collectively  
2 “Acer”) filed a First Amended Complaint seeking a declaratory judgment that Acer did not  
3 infringe any valid and enforceable claim of U.S. Patent No. 5,784,584 (“’584 patent”);

4           **WHEREAS** defendants Technology Properties Limited, Patriot Scientific Corporation,  
5 and Alliacense Limited (collectively “TPL”) filed an Answer denying Acer’s averment that Acer  
6 did not infringe any valid and enforceable claim of the ’584 patent but did not assert a  
7 counterclaim based on that patent;

8           **WHEREAS**, in the related actions, *Barco N.V. v. Technology Properties Limited, et al.*,  
9 Case No. 08-05398 JF and *HTC v. Technology Properties Limited, et al.*, Case No. 08-0882 JF,  
10 the Court has dismissed the ’584 patent based on a covenant not to sue with the same scope and  
11 language;

12           **WHEREAS** TPL has offered and hereby provides to Acer a covenant-not-to-sue with  
13 respect to the ’584 patent, which is reproduced in its entirety below; and

14           **WHEREAS** in light of TPL’s covenant-not-to-sue, Acer has agreed to dismiss its  
15 declaratory judgment claim as to the ’584 patent on the terms set forth below;

16           **NOW, THEREFORE**, TPL and Acer, by and through their undersigned counsel, hereby  
17 stipulate, and respectfully request that the Court order, as follows:

18           1.       TPL has provided the following covenant-not-to-sue to Acer, which the Court  
19 hereby approves: Technology Properties Limited and Patriot Scientific Corporation, each on  
20 behalf of itself and any successors-in-interest to U.S. Patent No. 5,784,584 (“the ’584 patent”),  
21 hereby unconditionally and irrevocably covenant not to assert at any time any claim of patent  
22 infringement including direct infringement, contributory infringement and/or inducing  
23 infringement against Acer, Inc., Acer America Corp., and Gateway Inc. (collectively “Acer”)  
24 under any claim of the ’584 patent as they currently read, and any claim in any reissued or  
25 reexamined version of the ’584 patent that is the same as, or substantially identical to, any claim  
26 of the ’584 patent as it currently reads, against any products made, used, offered for sale, sold, or  
27 imported into the United States by Acer currently or at any time prior to the date of this covenant.

28           2.       In light of TPL’s covenant-not-to-sue with respect to the ’584 patent, the Second

Claim of Declaratory Judgment Regarding the '584 Patent in Acer's First Amended Complaint is hereby **DISMISSED** without prejudice, for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 41(a)(2).

3. The dismissal provided by this Order does not limit the parties' ability to continue to prosecute its remaining claims, defenses, and counterclaims in this litigation regarding U.S. Patent Nos. 5,809,336; 6,598,148; 5,440,749; and 5,530,890. This dismissal also does not limit any rights by the parties to subsequently seek recovery of attorneys' fees and costs.

**IT IS HEREBY STIPULATED.**

Dated: June 25, 2010

FARELLA BRAUN & MARTEL LLP

I represent that concurrence in the filing of this document has been obtained from each of the other signatories which shall serve in lieu of their signatures on this document.

By: /s/ John L. Cooper  
John L. Cooper

Attorneys for Defendants  
TECHNOLOGY PROPERTIES LIMITED  
and ALLIACENSE LIMITED

Dated: June 25, 2010

KIRBY NOONAN LANCE & HOGE

By: /s/ Charles T. Hoge  
Charles T. Hoge

Attorneys for Defendant  
PATRIOT SCIENTIFIC CORPORATION

Dated: June 25, 2010

K&L GATES LLP

By: /s/ Jeffrey Ratinoff  
Jeffrey Ratinoff

Attorneys for Plaintiffs  
ACER, INC., ACER AMERICA CORP. and  
GATEWAY INC.

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

1. TPL has provided the following covenant-not-to-sue to Acer, which the Court hereby approves: Technology Properties Limited and Patriot Scientific Corporation, each on behalf of itself and any successors-in-interest to U.S. Patent No. 5,784,584 (“the ’584 patent”), hereby unconditionally and irrevocably covenant not to assert at any time any claim of patent infringement including direct infringement, contributory infringement and/or inducing infringement against Acer, Inc., Acer America Corp., and Gateway Inc. (collectively “Acer”) under any claim of the ’584 patent as they currently read, and any claim in any reissued or reexamined version of the ’584 patent that is the same as, or substantially identical to, any claim of the ’584 patent as it currently reads, against any products made, used, offered for sale, sold, or imported into the United States by Acer currently or at any time prior to the date of this covenant.

2. In light of TPL’s covenant-not-to-sue with respect to the ’584 patent, the Second Claim of Declaratory Judgment Regarding the ’584 Patent in Acer’s First Amended Complaint is hereby **DISMISSED** without prejudice, for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 41(a)(2).

3. The dismissal provided by this Order does not limit the parties’ ability to continue to prosecute its remaining claims, defenses, and counterclaims in this litigation regarding U.S. Patent Nos. 5,809,336; 6,598,148; 5,440,749; and 5,530,890. This dismissal also does not limit any rights by the parties to subsequently seek recovery of attorneys’ fees and costs.

DATED: 6/28/10

  
Honorable Jeremy Fogel  
United States District Court Judge